

REMARKS/ARGUMENTS

Applicant respectfully requests reconsideration of this application in view of the above amendments and the following remarks.

1. Status of the Claims

Claims 1-24 are pending in this application. Claims 1, 19 and 22, corresponding to previous claims 1, 18 and 20, have been amended to clarify the claimed subject matter, particularly with respect to structural features and elements of the upper cylindrical portion of the bottle stopper and its use. Additionally, the limitation, "wherein said air passageway is substantially encircled by said plurality of apertures," has been removed from current claims 1, 19 and 22 and is now presented in new dependent claims 2, 20 and 23.

Support for these amendments is found in the original specification at, for example:

Figs. 3 and 5;

Page 7 lines 15-26; and

Page 9, line 26 to page 10, line 19.

No new matter has been added.

2. Objection

Applicant respectfully submits that claim 1 does not require a bottle stopper device comprising a cap, but rather a bottle stopper device having an upper portion whose features are adapted to permit sealing of liquid within a bottle by a cap insertable into the upper portion. Claim 1 has been amended to clarify that distinction. The present claim 15 thus further limits claim 1 by requiring that the bottle stopper device further comprise a cap. Accordingly, Applicant respectfully traverses Examiner's requirement of appropriate correction.

3. Rejections/Arguments

a) 103(a) Rejections over Beall in View of Dowson

Claims 1-8, 10, 11, and 14-21, have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,812,113 to Beall ("Beall") in view of U.S. Patent No. 3,628,697 to Dowson ("Dowson").

Applicant respectfully submits that neither Beall nor Dowson teaches or suggests an air passageway substantially encircled by a plurality of apertures, as required by all of Applicant's claims. The limitation "substantially encircled," excludes the arrangement of Beall, wherein the pouring spout 28 and pouring apertures 64" are disposed wholly to one side of tube 40. See, e.g., Fig. 8. Moreover, Dowson fails altogether to disclose an air passageway.

In addition, the combination of Beall and Dowson fails to teach or suggest a bottle stopper as presently claimed, namely, a stopper having an upper cylindrical portion having a substantially circular interior cross-sectional shape and extending above and surrounding a pour opening composed of uniformly dispersed apertures and an air passageway to permit sealing liquid in a bottle from the atmosphere by a cap insertable into the upper portion interior of the bottle stopper to close both the apertures and the air passageway to the atmosphere. Beall does not teach or suggest an insertable cap, but rather discloses external screw caps 24 and 60, see Figs. 2 and 7, and external cap 90, see Fig. 9. Dowson discloses an insertable stopper 57, but does not teach or suggest an air passageway. Moreover, Beall fails to disclose an upper cylindrical portion with an interior cross-sectional shape surrounding both a pour opening and an air passageway and extending thereabove. Rather, as noted above, the tube 40 is disposed wholly to one side of the spout 28. Consequently, the arrangement of Beall would not permit closing both a pouring aperture and an air passageway by inserting the insertable stopper of Dowson into the interior of an upper cylindrical portion.

Finally, neither Beall nor Dowson discloses a pour opening composed of a plurality of apertures extending across substantially an entire cross section of an upper cylindrical portion.

For at least the foregoing reasons, Beall and Dowson fail to teach or suggest the claimed bottle stopper of claims 1, 18 and 20, and all claims dependent thereon, and this rejection should be withdrawn.

Furthermore, neither Beall nor Dowson discloses a pour opening comprising a plurality of apertures that substantially encircle an air passageway as required by new claims 22, 23 and 24. Beall and Dowson thus fail to teach or suggest a bottle stopper according to the new claims. For at least this additional reason, new claims 2, 20 and 23 should be allowed.

b) 103(a) Rejection over Beall in view of Dowson and Baxter

Claim 9, has been rejected under 35 U.S.C. 103(a) as being unpatentable over Beall in view of Dowson and further in view of U.S. Patent No. 4,128,189 to Baxter.

The reasons set forth in a) above are applicable here, as Baxter fails to supply the deficiencies of Beall and Dowson required by all of Applicant's claims. In particular, Baxter fails to teach or suggest a bottle stopper as presently claimed, namely, a stopper having an upper cylindrical portion having a substantially circular interior cross-sectional shape and extending above and surrounding the uniformly dispersed apertures and the air passageway to permit sealing the liquid in the bottle from the atmosphere by a cap insertable into the upper portion interior of the bottle stopper to close both the apertures and the air passageway to the atmosphere. Rather, Baxter discloses a device with an opening 60 disposed wholly to one side of a pouring spout 64. Moreover, the pouring spout 64 wholly lacks a pour opening comprised of a plurality of apertures, but rather has a single aperture.

In addition, claim 9 requires a visual indicator for identifying the relative location of the air passageway, the visual indicator comprising a marking having

a color different from the color of the cylindrical body. The Examiner argues that Baxter discloses this limitation by disclosing a spout and cover of different colors, presumably referring to the passage at col. 2 ln. 67 – col. 3 ln. 2, where Baxter discloses an insert having a color that blends well with the coloring of the label, cap and other parts of the container. Applicant respectfully submits that the entire insert 50 of Baxter is not a visual indicator for identifying the relative location of the air passageway, as it spans the entire 360 degrees around the axis of Baxter's device. Likewise, a color applied to the entire insert 50 would not be a "marking" having a color different from the color of the cylindrical body of claim 9, as it would not serve to indicate anything about any particular position on the insert.

Therefore the combination of Beall, Dowson and Baxter fails to disclose the additional limitation of claim 9, and this rejection should be withdrawn.

c) 103(a) Rejections over Beall in View of Dowson and Pham

Claims 12, 13 and 17¹ have been rejected under 35 U.S.C. 103(a) as being unpatentable over Beall in view of Dowson and further in view of U.S. Patent No. 5,228,603 to Pham et al. ("Pham").

The reasons set forth in a) are applicable here, as Pham fails to supply the deficiencies of Beall and Dowson. In particular, Pham fails to teach or suggest a bottle stopper as presently claimed, namely, a stopper having an upper cylindrical portion having a substantially circular interior cross-sectional shape and extending above and surrounding the uniformly dispersed apertures and the air passageway to permit sealing the liquid in the bottle from the atmosphere by a cap insertable into the upper portion interior of the bottle stopper to close both the apertures and the air passageway to the atmosphere. Although Pham discloses a filter, Pham fails to disclose or suggest a filter extending across a pour opening as required by claim 12, where all claims require that the pour

¹ Applicant understands by Examiner's reference to a flexible strand that Examiner also intended to reject claim 17.


opening extend across substantially an entire substantially circular cross section. Nor does Pham disclose or suggest an air passageway substantially encircled by pouring apertures, as required by previous claim 1 and new claim 2. For each of these reasons, Beall in view of Dowson and Pham fails to render any claim obvious.

Thus, for at least the foregoing reasons, current claims 12, 13 and 17 are not obvious over Beall in view of Dowson and Pham, and this rejection should be withdrawn.

CONCLUSION

In view of the foregoing, no single reference or combination of the cited references teaches or suggests, whether alone or in combination, the subject matter of claims 1-24. Applicant respectfully submits that all of the rejections have thus been overcome and claims 1-24, as amended, are in condition for allowance. Accordingly, an early indication of allowance is solicited.

Respectfully submitted,

By: 
James D. Ryndak
Reg. No. 28,754
Attorney for Applicant

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RYNDAK & SURI LLP
200 W. Madison St. – Suite 2100
Chicago, IL 60606
312-214-7770 (telephone)